



City of Brighton
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SPECIAL CITY COUNCIL MEETING

AGENDA

City Hall
6th Floor Study Session Room
June 24, 2014
12:00 P.M.

PLEDGE OF ALLEGIANCE TO THE AMERICAN FLAG:

ROLL CALL:

APPROVAL OF AGENDA:

ORDINANCES FOR FINAL CONSIDERATION:

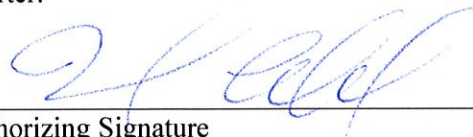
- A. An Ordinance of the City Council of the City of Brighton, Colorado Approving an Oil and Gas Lease (No Surface Occupancy) with Synergy Resources Corporation for +/- 140 Net Acres in Certain Portions of Sections 14, 24, and 25, Township 1 South, Range 67 West of the 6th P.M., Adams County Colorado; Finding that the Terms of said Lease are Reasonable and that it is in the Best Interest of the City to Enter into said Lease; Authorizing the Mayor to Execute said Lease on Behalf of the City and the City Clerk to Attest Thereto; Authorizing the City Manager to Undertake such Tasks and Execute such Documents as may be Required to Implement said Lease; and Setting Forth Other Details Related Thereto.

UTILITIES RESOLUTIONS:

- A. A Resolution of the City Council of the City of Brighton, Colorado, Acting by and through its Water Enterprise, Authorizing the City Manager to Execute a Water Storage and Delivery Agreement with Farmers Reservoir and Irrigation Company.

ADJOURN TO STUDY SESSION:

This Special City Council Meeting is being called in accordance with Section 5.2 of the Brighton City Charter.



Authorizing Signature



Date

STAFF REPORT

Reference: **Ordinance to Approve the Leasing of City-Owned Mineral Rights in Sections 14, 24 and 25 to Synergy Resources Corporation**

To: **Mayor Richard N. McLean and Members of City Council**
Through: **Manuel Esquibel, City Manager**

Prepared By: **Matthew Sura, Esq., Oil and Gas Special Counsel**

Date Prepared: **June 11, 2014**

PURPOSE

Consider an ordinance approving and Oil and Gas Lease of City-owned minerals in Section 14, 24 and 25, Township 1 South, Range 67 West of the 6th P.M. (Adams County) to Synergy Resources Corporation. The Ordinance sets forth the chronology of events resulting in the necessity to proceed with the Lease, authorizes the Mayor to execute the Lease on behalf of the City, the City Clerk to attest thereto and the City Manager to execute other documents and take other actions necessary for the implementation of the Lease.

BACKGROUND

1. The City owns an estimated 1,400 acres of surface lands within and near the City of Brighton. For most of these lands, the City owns at least some portion of the mineral rights.
2. In the past year, the City has received numerous offers to lease portions of the City-owned minerals for oil and gas development.
3. Also during the past year, the City has been in the process of drafting amendments to its Municipal Code that would facilitate the development of oil and gas resources within the City of Brighton, while mitigating potential impacts to the City's groundwater resources as well as potential land use conflicts between such development and other land uses.
4. It has been the City's intention to have the new oil and gas regulations in place prior to considering leasing any City-owned lands.
5. Ward Petroleum filed four force-pooling applications affecting four sections of real property within and near the City. The Colorado Oil and Gas Conservation Commission (COGCC) scheduled its hearing on Ward's forced pooling applications for June 17, 2014.
6. Through negotiations with Ward, the City has until June 26, 2014 to either enter into a lease or be force pooled.
7. There are laws in Colorado that allow reluctant mineral owners within a drilling unit to be forced into becoming a partner in the oil and gas development of the unit. The "forced pooling" laws are found in C.R.S. § 34-60-116 and COGCC Rule 530.

8. Once a non-consenting mineral owner has been threatened to be forced pooled, they have three options: (i) lease the minerals; (ii) pay to be a partner in the development of the land; or (iii) allow themselves to be forced pooled.
9. Forced pooling allows the oil and gas operator to proceed with developing a drilling unit for oil and gas. By statute, the non-consenting mineral owners will receive 12.5% royalty on their minerals within the unit until the well has paid for itself twice ("paid out"). Once the well has 'paid out' (i.e., generated revenue as high as \$10-12 million per well), the non-consenting mineral owners become partners in the well proportionate to their mineral interests. For example: if the unit is 100 acres, and the non-consenting mineral owner owns 10 acres, they will have a 10% ownership interest in the well.
10. Forced pooling requires the City to become a partner in the oil and gas business, thus exposing the City to liability for its percentage of the costs once the well has 'paid out'.
11. The benefit of leasing is that the City would receive its 20% royalty without having to deduct any costs and without having any long-term liability in the oil and gas operation.
12. Because the City does not want to get into the oil and gas business, the legal staff is recommending leasing its minerals rather than being forced pooled.
13. The Oil and Gas Lease with Synergy Resources Corporation that has been negotiated is fair to the City. The Lease terms exceed the apparent average rate in the area and the Lease itself is written to ensure that there will be no drilling on the City property (no-surface occupancy). Synergy Resources is also a well-known, reputable oil and gas operator.

FINANCIAL IMPACT

1. The fiscal impact to the City will be positive. The City will receive \$3,750 / acre, with the potential revenue of as much as \$525,000 if the City owns 140 mineral acres. The exact amount is dependent upon a final determination of the percentage interest that the City has in the subject minerals.
2. The royalty rate is 20% which has the potential to bring meaningful revenue to the City, depending on the number of wells drilled and the extent of the production from those wells. The production will likely be greatest in the first three years, then will start declining rapidly.

OPTIONS FOR CITY COUNCIL CONSIDERATION

The Council may take any of the following actions:

1. Approve the Ordinance on first reading by finding that entering into the Oil and Gas Lease is in the best interests of the City and authorize actions of the Mayor, City Clerk, and City Manager to execute and implement the Lease.
2. Reject the proposed Ordinance which would result in the City being subject to the forced pooling order.
3. Postpone consideration of the proposed Ordinance which would either require the City to consider an emergency ordinance prior to June 26, 2014 or it would be forced-pooled.

STAFF RECOMMENDATION

Unfortunately, the deadline for negotiating a lease or being subject to a forced pooling order has occurred prior to the City's adoption of the updated oil and gas regulations, thus requiring the City to proceed with a lease contrary to its stated intention to have updated regulations in effect prior to leasing any City land for oil and gas development or taking no action thereby being subject to the consequences of a forced pooling order.

Therefore, Staff recommends approval of the attached Ordinance. The Staff believes that it is in the best interests of the City to prevent its minerals from being forced pooled by entering into the Oil and Gas Lease with Synergy Resources. Staff finds the terms of the Lease to be fair, reasonable and acceptable.

ATTACHMENTS

- Ordinance to approve the Oil and Gas Lease with Synergy Resources Corporation
- The Proposed Oil and Gas Lease between the City of Brighton and Synergy Resources Corporation will be provided at the City Council meeting

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO APPROVING AN OIL AND GAS LEASE (NO SURFACE OCCUPANCY) WITH SYNERGY RESOURCES CORPORATION FOR +/- 140 NET ACRES IN CERTAIN PORTIONS OF SECTIONS 14, 24 AND 25, TOWNSHIP 1 SOUTH, RANGE 67 WEST OF THE 6TH P.M., ADAMS COUNTY COLORADO; FINDING THAT THE TERMS OF SAID LEASE ARE REASONABLE AND THAT IT IS IN THE BEST INTEREST OF THE CITY TO ENTER INTO SAID LEASE; AUTHORIZING THE MAYOR TO EXECUTE SAID LEASE ON BEHALF OF THE CITY AND THE CITY CLERK TO ATTEST THERETO; AUTHORIZING THE CITY MANAGER TO UNDERTAKE SUCH TASKS AND EXECUTE SUCH DOCUMENTS AS MAY BE REQUIRED TO IMPLEMENT SAID LEASE; AND SETTING FORTH OTHER DETAILS RELATED THERETO.

ORDINANCE NO. _____

INTRODUCED BY: Bell

WHEREAS, in April and May of 2014, Ward Petroleum Corporation filed a series of Verified Applications with the Colorado Oil and Gas Conservation Commission for an order establishing a 640 acre drilling and spacing unit for horizontal wells in Sections 14, 24 and 25, Township 1 South, Range 67 West of the 6th P.M., Adams County and for an order for pooling of all interests in the Unit; and

WHEREAS, the City of Brighton owns certain lands located in the referenced Sections and was the subject of the forced pooling application; and

WHEREAS, the City is in the process of finalizing amendments to its Municipal Code by enacting updated regulations to facilitate the development of oil and gas resources within the City of Brighton, while mitigating potential impacts to the City's groundwater resources as well as potential land use conflicts between such development and other land uses; and

WHEREAS, the City intended to have updated regulations in effect prior to leasing any of its land for oil and gas development; and

WHEREAS, the Code revisions are expected to be adopted in August, 2014; and

WHEREAS, the City Council finds and determines that it is in the best interests of the City to make good faith efforts at this time to negotiate an oil and gas lease for the City owned property that was subject to the forced pooling order sought by Ward Petroleum rather than let those lands be force pooled; and

WHEREAS, unfortunately, the deadline for negotiating a lease or being subject to a forced pooling order has occurred prior to the City's adoption of the updated oil and gas regulations, thus requiring the City to proceed with a lease contrary to its stated intention to have updated regulations in effect prior to leasing any City land for oil and gas development or taking no action thereby being subject to the consequences of a forced pooling order; and

WHEREAS, with the direction and approval of the City Council representatives of the City have successfully negotiated an Oil and Gas Lease (No Surface Occupancy) with Synergy Resources Corporation for the +/- 140 net mineral acres that would be subject to the forced pooling application and subsequent order, a copy of which is attached hereto as Exhibit A; and

WHEREAS, the City Council finds and determines that the terms of said Lease are reasonable, and taking into consideration the timing circumstances and looming deadlines, further finds and determines that it is in the best interests of the City to enter into said Lease with Synergy Resources Corporation.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO, AS FOLLOWS:

Section 1. The Mayor is authorized to execute said Oil and Gas Lease (No Surface Occupancy) with Synergy Resources Corporation, the City Clerk to attest thereto, and the City Manager is authorized to undertake such tasks and execute said documents as may be necessary to implement said Lease on behalf of the City.

Section 2. **Purpose.** The purpose of this Ordinance is to provide for the health, safety and welfare of the people.

INTRODUCED, PASSED ON FIRST READING AND ORDERED PUBLISHED THIS 17th DAY OF June, 2014.

CITY OF BRIGHTON, COLORADO

Richard N. McLean, Mayor

ATTEST:

Natalie Hoel, City Clerk

APPROVED AS TO FORM:

Margaret R. Brubaker, City Attorney

**Published in the *Denver Post*
First Publication: June 19, 2014**

**PASSED ON SECOND AND FINAL READING AND ORDERED PUBLISHED
THIS 24th DAY OF June, 2014.**

CITY OF BRIGHTON, COLORADO

Richard N. McLean, Mayor

ATTEST:

Natalie Hoel, City Clerk

**Published in the *Standard Blade*
Final Publication: July 2, 2014**

Department of Utilities

STAFF REPORT

Reference: Resolution Authorizing the City Manager to Execute a Water Storage and Delivery Agreement with Farmers Reservoir and Irrigation Company

To: Mayor Richard N. McLean and Members of City Council
Through: Manuel Esquibel, City Manager

☐ Study Session Date: _____ ☐ Regular Council Agenda Date: _____
☐ City Attorney Approval _____ ☐ City Manager Approval: _____
☐ Finance Director Approval: _____

Through: Clint Blackhurst, Interim Utilities Director

Prepared By: Sarah E. Borgers, P.E., Assistant Director

Date Prepared: June 19, 2014

PURPOSE

Consider a resolution to authorize the City Manager to execute a water storage and delivery agreement with Farmers Reservoir and Irrigation Company.

BACKGROUND

The City is completing Water Court Case 03CW320. The purpose of this decree is four-fold:

- Adjudicate four wells in the Beebe Draw Aquifer
- Change FRICO-Barr and Burlington-Barr water shares from agricultural use to municipal use
- Adjudicate exchanges
- Create an augmentation plan for the Beebe Draw Wells

Farmers Reservoir and Irrigation Company (FRICO) operates Barr Lake and makes releases to the Beebe Draw Canal and other ditches below Barr Lake. FRICO is responsible for operating the reservoir's physical water supply but also the water accounting for that water supply and other administrative functions.

These FRICO-operated structures are in close proximity to Brighton's Beebe Draw Well Field as well as the location of return flows that will be required per the 03CW320 decree. Augmentation returns, return flow requirements from changed water shares, and direct delivery to the Beebe Draw Well Field all require the cooperation of FRICO. They will be responsible for much of the operation and storage of Brighton's physical water supply and will

also incur some additional accounting obligations in conjunction with the water accounting completed by the City.

After extensive negotiations, FRICO and Brighton staff have settled on details of that agreement that are agreeable to both parties at the staff-level. The negotiated agreement and its terms are being brought to City Council for their consideration.

In the proposed agreement, FRICO will be obligated to operate Brighton storage in Barr Lake, make certain releases to various ditches downstream of Barr Lake, allow for direct delivery of stored share water to Brighton's wells, and maintain Barr Lake accounting as may be necessary with the State Engineers Office. Brighton would agree to pay \$50 per acre-foot of water managed by FRICO. This term would vary with the Consumer Price Index (CPI) over time.

FINANCIAL IMPACT

The City would agree to pay \$50 per acre-foot of water managed. With Brighton's current share portfolio, the City can expect to pay just less than \$50,000 a year for FRICO's management per this agreement, depending on annual share allocations.

OPTIONS FOR CITY COUNCIL CONSIDERATION

The Council may take any of the following actions:

1. Approve the resolution as stated.
2. Reject the proposed resolution.
3. Postpone consideration of the proposed resolution to negotiate item(s) in the Agreement.

STAFF RECOMMENDATION

Brighton staff, along with Brighton's special water counsel and expert witnesses, has thoroughly reviewed and negotiated the terms of this agreement and recommends the approval of this agreement. This agreement with Farmers Reservoir and Irrigation Company is a key component to Brighton's Beebe Draw Well Field operations and must be completed in order to continue operation of this significant water supply.

ATTACHMENTS

- Resolution of the City Council of the City of Brighton, Colorado, Acting by and Through Its Water Enterprise, Authorizing the City Manager to Execute a Water Storage and Delivery Agreement with Farmers Reservoir and Irrigation Company
- Water Storage and Delivery Agreement between the City of Brighton and Farmers Reservoir and Irrigation Company

**CITY OF BRIGHTON
CITY COUNCIL RESOLUTION**

RESOLUTION NUMBER: _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO, ACTING BY AND THROUGH ITS WATER ENTERPRISE, AUTHORIZING THE CITY MANAGER TO EXECUTE A WATER STORAGE AND DELIVERY AGREEMENT WITH FARMERS RESERVOIR AND IRRIGATION COMPANY.

WHEREAS, the City of Brighton has Water Court Case 03CW320 that will allow the City to operate its wells under the call system, change water shares for municipal uses, adjudicate exchanges, and authorize an augmentation plan in the Beebe Draw and South Platte River Basins, and

WHEREAS, Farmers Reservoir and Irrigation Company operates Barr Lake including storage management, storage accounting, and releases to the Beebe Draw Canal, and

WHEREAS, the City of Brighton is reliant upon this management to successfully maintain its augmentation and return flow requirements for the Beebe Draw Well Field, and

WHEREAS, the City of Brighton and Farmers Reservoir and Irrigation Company have, through extensive negotiations, settled on terms of a Water Storage and Delivery Agreement whereby the City of Brighton will provide fair and equitable monetary compensation to Farmers Irrigation and Reservoir Company for the management of certain aspects of Barr Lake storage, management, and releases for the benefit of the City of Brighton.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL AS FOLLOWS:

1. The Water Storage and Delivery Agreement between the City of Brighton and Farmers Reservoir and Irrigation Company is hereby approved.
2. The City Manager is authorized to execute such agreement on behalf of the City.

DATED THIS 24th DAY OF June, 2014.

CITY OF BRIGHTON, COLORADO

By: _____
Richard N. McLean, Mayor

ATTEST:

Natalie Hoel, City Clerk

APPROVED AS TO FORM:

Margaret R. Brubaker, City Attorney